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Supreme Court, U.S.
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No. 941638 APR 6 1995

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1994

JESSIE SHIOW-JIUAN HO

Petitioner

vs.

THE STATE BAR OF CALIFORNIA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

JESSIE SHIOW-JIUN HO
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Petitioner Attorney *Pro Se*

QUESTIONS PRESENTED

1. Is the absence of recusal remedies for State Supreme Court Justices a violation of due process of law?

2. Is a State Supreme Court which appoints employees to a private party, and by finding against the other party obtains monies for their appointees' employer to reimburse their appointees' salaries and benefits, disqualified to sit on cases involving that party?

3. May a State Supreme Court sign a stipulated order when consent thereto has been withdrawn by a party prior to its approval?

4. Is a stipulation which contains no disclosure of monies demanded and of the relationship of a party to the judge and other conflicts of interest required to be set aside for lack of an informed consent?

5. When the law relied on has been changed by a party subsequent to signing a stipulation but prior to approval by the Court, does due process require that a party be permitted to withdraw her consent to the stipulation?

LIST OF PARTIES

The parties are as follows:

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

Petitioner Attorney respectfully prays that a writ of certiorari issue to review the judgment of the California Supreme Court, Case No. S044354, entered on March 16, 1995, denying a motion for its recusal and denying a Petition for Review and Application for a Stay. The Petition requested non-approval of a stipulation with the State Bar of California to which consent had been withdrawn, upon discovery by the Petitioner of its undisclosed financial interest in the proceedings.

ORDERS BELOW

The order of the California Supreme Court [1] denying the motion for recusal and the Petitioner's Petition for Review and Application for a Stay and entering an order of suspension of the Petitioner based on a stipulation to which Petitioner had withdrawn her consent is reproduced at Appendix A.

II.

JURISDICTION

The jurisdiction of this Court is involved under 27 U.S.C.A. s. 1257(3). This Petition for writ of certiorari is timely filed within ninety days of the order of the Supreme Court of California on March 16, 1995. Appendix A.

III.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution

Amendment XIV: "No State shall .... deprive any person of life,

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1 The order is signed by an unidentified Acting Chief Justice.

liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

California Constitution

Article 6, section 1: "The judicial power of the State is vested in the California Supreme Court, the Courts of Appeal, the Superior Courts, and the Municipal Courts. All courts are courts of record"

Article 6, section 9: "The State Bar of California is a public corporation...."

State Statutes:

The state statutes at issue are California Business and Professions Code sections 6079.1, 6079.5, 6086.5, 6086.10, and 6086.65(a), and 6140.7 They are set forth at Appendix B.

IV.

STATEMENT OF THE CASE

Petitioner entered into a stipulation with an employee of the State Bar concerning an attorney disciplinary matter prior to the issuance of a Notice of charges on November 16, 1994. Said stipulation provides that, "The parties agree that stipulations as

to proposed discipline involving suspension, are not binding on the Supreme Court of California.... The Supreme Court must enter an order effectuating the terms and conditions of this stipulation before any stipulation for suspension, actual or stayed, will be effective." Appendix D-9,D-14, Stip, p. 4, Effect of this Stipulation, item 4. It provides, "the agreed disposition is eligible for costs to be awarded to the State Bar. (Bus. & Prof. Code s. 6086.10 and 6140.7). Petitioner has been notified of his or her duty to pay costs. The amount of costs assessed by the Office of Trial Counsel will be disclosed in a separate cost certificate submitted following approval of this stipulation by a hearing judge. The amount of costs assessed by the State Bar Court will be disclosed in a separate cost certificate submitted upon finalization of this matter." Appendix D-16, Stip, Pg.4, item H1.

The Petitioner notified the State Bar of her withdrawal of consent to the stipulation on December 8, 1994, which was acknowledged as received December 14, 1994 . She also notified the California Supreme Court. None-the-less, The State Bar on January 11, 1995 sent a transmittal of its recommendation for

approval of the stipulation to the California Supreme Court. It sent a prepared order for its signature. It attached a claim of "costs" of $1,517.70. There were no out-of pocket costs listed. It claimed costs of $1,044.70 for the Office of Investigation and the Office of Trials of the State Bar of California. Of the $1,044.70, the Office of Trials assessed $309.00 for itself. The Office of Investigations of the State Bar assessed $387.00 for itself. It attached a claim for $473.00 for the Office of the State Bar Court of the State Bar of California. It also had no out-of-pocket costs. No itemization was provided of the $1,517.70 costs. Appendix D-5, D-6, D-7.

Based on Petitioner's discovery on or about January 16, 1995 that the State Bar of California collected its employee prosecutors, investigators, and "judges" salaries and benefits on a time-expended basis as claimed "costs" by securing guilty adjudications in attorney disciplinary proceedings which is not disclosed to an accused until after they stipulate or are found guilty and she discovered other undisclosed financial interests, Petitioner on January 26, 1995 filed with the California Supreme

Court a Petition for Review and Application for a Stay based on her withdrawal of consent to the stipulation prior to its transmittal or approval by the California Supreme Court. Said Petition for Review and Application for a Stay is reproduced at the Appendix as D.

Petitioner filed a Motion for Recusal of the California Supreme Court's and requested it rule on the motion before hearing and determining the merits, so as to permit the Petitioner access to the federal court concerning the bias issue. Said motion is reproduced at the Appendix at C.

On March 27, 1995 the California Supreme Court summarily denied the petition for a writ of review, application for stay, motion for recusal and ordered the stipulation entered as an order and ordered costs awarded to the State Bar. Appendix A.

V.

REASONS FOR GRANTING THE WRIT

A. The Absence of Judicial Recusal Remedies Concerning a State Supreme Court Poses Due Process Problems

The Motion for Recusal of the California Supreme Court

Justices poses the problem that their approval of the stipulation, while consent had been withdrawn, would financially benefit the employer of its appointees to the State Bar and recoup the salary and benefits of its appointees to a party on a time-expended basis. Appendix D.[2] The $473.00 for the State Bar Court judge recoups its appointee's private salary and benefits in approving the stipulation. The $309.00 recoups the salary and benefits of its appointee's co-employee private prosecutor, and the $387.00 recoups the private salary and benefits of its appointees' co-employer investigator. By finding cause for a violation of the probation terms in said stipulation, a minimum of $4,470 in

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The State Bar of California's employees are the prosecutors against accuseds. In 1989 the California Supreme Court appointed nine employees to the State Bar of California. In 1993 it appointed a tenth employee. They sit as judges to the State Bar's private State Bar Court. They require over a million dollars a year for their collective private salaries and benefits. By the State Bar and its judges having accuseds stipulate to dispositions and costs, they then impose their salaries and benefits as the claimed "costs" without prior disclosure to an accused, and for each probation violation proceeding, they impose a minimum of an additional $4,470 in salaries and benefits for themselves. By disbarring and suspending the State's attorneys, the State Supreme Court obtains monies for the employer of its appointees to the State Bar party. Appendices C,D.

additional salaries and benefits for the employer of its appointees to a party from each additional taking of the Petitioner's license to practice law would thereby be obtained. Over fourteen million dollars for the private employer of its appointees has been obtained from 3,091 license takings in less than four and half years. Appendix D-9.

The lack of statutes, rules, or constitutional provisions permitting recusal of a State Supreme Court judge in the California system poses the problem that a party has no procedural remedy to assure a fair and impartial adjudicator within its State Supreme Court.

B. A State Supreme Court which is a Partisan for a Prosecuting Party poses Dangers concerning the Licensing of a State's Attorneys

Based on this Court's statement that the test is whether the situation offers a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clean, and true between the State and the accused, **Aetna Life Insurance Company v. La Voie** 475 U.S. 813, 89 L. Ed. 823,

106 S. Ct. 1580 (1988), is not a situation where a State Supreme Court appoints employees to a prosecuting party, which is privately financed, and where by denying all issues of all accuseds, including withdrawal of consent to a stipulation, it orders monies paid as "costs" to reimburse the party for the salaries and benefits of not only its appointees to a party, but for their co-employees as well, such a situation of temptation to not hold the balance nice, clean, and true, that recusal of the California State Supreme Court Justices was and is required?

C. A Court signing a Stipulation to which consent has been withdrawn prior to its approval involves Due Process violations

Pursuant to **Carnegie Steel Company v. Cambria Iron Company** 185 U.S. 403, 46 L. Ed. 968, 22 S. Ct. 698 (1902), "a stipulation of counsel entered into for the purpose of saving time may be repudiated where the facts subsequently developed show that with respect to a particular matter, it was inadvertently signed, provided that notice be given in sufficient time to prevent prejudice to the opposite party." The Circuit Courts have generally adopted a "manifest injustice" standard by which a party

is permitted, after court approval, to withdraw consent to a stipulation. **Logan Lumber Co. v. Commissioner of Int. Revenue** 365 F. 2d. 846, p. 855 (Fifth Cir. 1966), **United States v. Tacoma** 330 F. 2d. 153 (Ninth Cir. 1964). There are no cases concerning withdrawal of consent to a stipulation before it has been submitted and approved by a court. It appears that the supervisory power of the Court will not attempt to enforce a stipulation when a party has withdrawn consent to it prior to its submission for approval to a court. If a party withdraws consent, it would appear there is no stipulation upon which the court may act. It would appear this issue of due process of law must be resolved by this Court, since other courts may also be enforcing and ordering stipulations entered when consent has been withdrawn by a party prior to a Court's approval.

May a Court, consistent with the due process right to "an opportunity to be heard at a meaningful time and in a meaningful manner," **Mathews v. Eldridge** 424 U.S. 319, 333, 85 S. Ct. 893, 902, 47 L. Ed. 2d. 18 (1976) (quoting **Armstrong v. Manzo** 380 U.S. 545, 552, 85 S. Ct. 1187, 1191, 14 L. Ed.

2d. 62 (1965), approve a stipulation to which consent has been withdrawn prior to its submission for approval to the court, when the stipulation's provisions state that the California Supreme Court must enter an order effectuating the terms and conditions of the stipulation before it is effective?

D. Stipulations for Attorney Discipline based on Undisclosed Conflicts of Interest within prosecutors and judges should be voided for lack of an informed consent

The stipulation's claim that the Respondent has been advised of her obligation to pay costs to be disclosed later would not have placed an ordinary person on notice that the prosecutor, his co-employee investigator, and what the Petitioner learned later, their mutual co-employee judge of the State Bar's State Bar Court, would be demanding the Petitioner pay their salaries and benefits. The purpose of entering a stipulation before charges are filed is to have no costs or expenses incurred and no liability for the same. Had the State Bar or its judges advised the Petitioner that the price of entering the stipulation was to pay their salaries and benefits and that for any further proceedings concerning revocation of probation under it, the judge would like

his and his co-employee prosecutors and investigators' salaries and benefits paid by the Petitioner by his finding a violation and taking the Petitioner's license, the Petitioner would have been forewarned not to sign the stipulation as this is a private, for profit operation the State Bar is running instead of a proper attorney licensing system. Appendix D-16.

The stipulation did not disclose the State Bar Court is not a Court and its judge approving and overseeing it is selected and employed by the prosecuting party from its private funds. It states that,"The parties agree that the State Bar Court has jurisdiction over Respondent to take the action agreed upon within this stipulation." Stip.,p. 3, B. There is no disclosure that the State Bar Court is not a Court, but a private program created and run by the State Bar's employees. There is no disclosure that its judges are selected and paid by the State Bar as their employees. There is no disclosure that this entity has no rules of a court or of an administrative entity. The prosecuting party writes its rules. For example, hearings are barred. Appendix D-29, D-30.

The Petitioner identified seventy eight items of lack of

disclosure by the State Bar and its judges concerning their various conflicts of interest and the monies they want for various schools, programs, examinations the stipulation would have forced the Petitioner to pay for which were never disclosed in it or by them to the Petitioner. Appendix D-18, D-19, Reply Brief.

As stated by this Court in **In re Ruffalo** 390 U.S. 544, 88 S. Ct. 1222, 20 L.Ed.2d. 117 (1968), at p. 551, in reference to attorney disciplinary proceedings, "These are adversary proceedings of a quasi-criminal nature. Cf. **In re Gault,** 387 U.S. 1, 33." The issue is whether due process requires that the stipulation be voided for lack of an informed consent under the reasoning of this Court that "... The relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must be made with full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." **Moran v. Burbine** 475 U.S. 412, 421 106 S. Ct. 1135, 1141, 89 L. Ed.2d. 410 (1986), **Kercheval v. United States** 274 U.S. 220,223, 47 S.

Ct. 582, 583, 71 L. Ed. 1009 (1927). It did not reflect "the unfettered choice of the defendant." **Boykin v. Alabama** 395 U.S. 238, 242-244, 89 S. Ct. 1709, 1711-1713, 23 L. Ed.2d. 274 (1969). It was not made voluntarily, knowingly, and intelligently with full understanding and appreciation of the consequences. **Machibroda v. United States** 368 U.S. 487, 493, 182 S. Ct. 510, 513, 7 L.Ed.2d. 473 (1962).

E. When a Party has changed the Law relied on, a Stipulation based on the Remedies relied on should be voided

Pursuant to **Logan, supra**, p. 855, "Where a stipulation is entered into under mistake of law induced by the then existing state of the case law, a taxpayer is entitled to be relieved of the effect of the stipulation if no prejudice results." When the stipulation was signed on November 16, 1994, the State Bar's rules permitted a party to move to have costs reduced, waived, or modified. Transitional Rules of Procedure of the State Bar, Rule 462, in effect 1989-January 1,1995. Reply Brief, p.27-29.

Effective January 1, 1995, the State Bar revoked the provision. It passed a rule barring an accused questioning their salaries and benefits being imposed as costs and the amount it

awarded itself. Rule 282 of the Rule of Procedures of the State Bar of California, effective January 1, 1995 states, "A respondent may challenge the propriety under Business and Professions Code section 6086.10(b) of the inclusion of items in the certificates of costs, and/ or may challenge the computation of properly included costs, **provided, however, that this rule does not authorize a challenge to the State Bar's determination of `reasonable costs' under Business and Professions Code section 6086.10(b)(3).**" (emphasis added). Reply Brief, p.27-29.

Since the law relied on in existence on November 16, 1994 was revoked by the other party to the stipulation January 1, 1995 before it transmitted its recommendation for the California Supreme Court on January 11, 1995 for it to approve the stipulation to which the petitioner had withdrawn her consent on December 8, 1994, the stipulation should be voided as the remedy in existence to question the costs was revoked after the fact, and by the private party who is the financial beneficiary of its own rules barring all remedy for all accuseds within its private, partisan, and financially interested "Court."

CONCLUSION

A state system of attorney licensing that operates on layers of undisclosed private partisan and financial interests within private prosecutors, investigators, and judges does not provide confidence to the Public that lawyers are properly licensed.

The Petition should be entertained to address issues concerning due process requirements concerning fair and impartial adjudicators within a State Supreme Court, remedies to assure the same, entry of stipulated orders when consent has been withdrawn, and whether a stipulation should be voided for lack of an informed consent and when the law relied on was changed by the other party after the stipulation was executed but before it was approved.

RESPECTFULLY SUBMITTED,

Dated: April 4, 1995

JESSIE SHIOW-JIUAN HO
Petitioner Attorney *Pro Se*

Verification

I have read the foregoing Petition for Writ of Certiroari to the Supreme Court of the State of California and state it is made on my own personal knowledge, information, and belief, and this verification is executed this 4th day of April, at San Jose, California.

RESPECTFULLY SUBMITTED,

Dated: April 4, 1995

JESSIE SHIOW-JIUAN HO
Petitioner Attorney *Pro Se*